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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/517,580	08/02/2005	Alexander Fuchs	LU 6020 (US)	1368

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INTELLECTUAL PROPERTY
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EXAMINER	
NUTTER, NATHAN M	
ART UNIT	PAPER NUMBER
1711	

MAIL DATE	DELIVERY MODE
06/05/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/517,580	FUCHS ET AL.	
	Examiner	Art Unit	
	Nathan M. Nutter	1711	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☐ Responsive to communication(s) filed on _____.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-5,7 and 9-15* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-5,7 and 9-15* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☒ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date *03-05*.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 4 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The recitation in claim 4 of "exclusively" is not clear as to its inclusion either for the copolymer "A)" or copolymer "B)."

Claim 13 is rejected under 35 U.S.C. 112, second paragraph, as being incomplete for omitting essential steps, such omission amounting to a gap between the steps. See MPEP § 2172.01. The omitted steps are: the steps required to manufacture the product, whether it be an extrusion, mixing, etc..

Double Patenting

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to

be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 1-5, 7 and 9-15 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 17-26 of copending Application No. 10/517,580 (Fuchs et al US 2006/0167185), newly cited. Although the conflicting claims are not identical, they are not patentably distinct from each other because the claims embrace the polymers and their compositional limitations as herein recited and claimed. A skilled artisan would have a high level of expectation to achieve what is recited as to haze value and transition temperature, as claimed.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-5, 7 and 9-15 are rejected under 35 U.S.C. 102(b) as being anticipated by Hűffer et al (US 5,773,516), newly cited.

The reference to Hűffer et al teaches the manufacture of a propylene copolymer composition having a first copolymer, "containing from 0 to 15% by weight

copolymerized C_2-C_{20}-alk-1-enes" which embraces the recited range at 0 to 10% by weight, with a second propylene copolymer, "containing from 15 to 15% by weight copolymerized C_2-C_{20}-alk-1-enes" which embraces the recited range at 12 to 18% by weight, as recited in claims 1 and 2. Note the Abstract. The other monomer may be exclusively ethylene (claim 4). The range of inclusion of the first copolymer is taught to be "25 to 97 % by weight" and the second as "3 to 75% by weight" in the Abstract, which embraces that recited in claim 20 at 90 to 10, and 27 to 75. The production of "films, fibers and moldings" is shown at column 1 (lines 32-34). Further, note column 6 (lines 24-31 and 62-67). Since the compositions are essentially identical to those claimed, the compositions would inherently possess the haze value range and brittle/tough transition temperature as recited in claim 1. Nothing is recited that would indicate otherwise. Likewise, the composition would inherently possess the characteristics re cited in claims 5 and 11. Again, nothing is recited or provided that would indicate otherwise.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 1, 3-5, 7 and 10-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mochizuki et al (US 6,511,755), newly cited.

The patent to Mochizuki et al teaches the production of a propylene copolymer blend that may comprise a first copolymer having from 1.5 to 10% by weight

comonomer, which may be ethylene, with a second copolymer embracing the olefin content, which may be ethylene, at 20 to 30 % by weight, as recited in claims 1 and 4. Note column 4 (line 51) to column 5 (line 25). That passage also shows manipulation of haze due to the presence of propylene, as recited in claim 1. Further, note column 12 (lines 37-45) in that regard, and the data in Tables 1 and 2. The range of inclusion for the two copolymers is shown at Table 7 to embrace those claimed herein. The manipulation of the molecular weight is shown at column 9 (lines 14-16). The process of claim 13 is shown at column 9 (lines 29 et seq.). The production of films is shown thoughout the patent (claims 14 and 15). Although the reference is silent as regards the Brittle/tough transition temperature, stress whitening value (claim 5), glass transition temperature (claim 10) and shear viscosity (claim 11), a skilled artisan would have a high level of expectation of success following the teachings of the reference to achieve the claimed inventions.

Claims 1-5, 7 and 9-15 rejected under 35 U.S.C. 103(a) as being unpatentable over Delaite et al (US 6,586,528), newly cited.

The patent to Delaite et al teaches the manufacture of a propylene copolymer blend that may comprise a first copolymer, present in the amounts of 55 to 74 parts, having 1% by weight ethylene or less (homopolymer, claim 2), with a second propylene copolymer, present in the amounts of 26 to 45 parts, having an ethylene content overlapping that claimed at 10 to 15% by weight, as recited in claims 1 and 4. The reference teaches the inclusion of nucleating agents at column 3 (lines 53-59), as in

claim 9. The reference teaches the production of articles and films, as in claims 14 and 15. Note column 1 (lines 16-21). The process, as recited in claim 13, is shown at column 5 (lines 10 et seq.). Further, note column 4 (lines 65-67) and column 5 (lines 43-49) which teaches manipulation of the molecular weight and the molecular weight distribution, as in claims 12. Although the reference is silent as regards the Brittle/tough transition temperature, stress whitening value (claim 5), glass transition temperature (claim 10) and shear viscosity (claim 11), a skilled artisan would have a high level of expectation of success following the teachings of the reference to achieve the claimed inventions. As such, a skilled artisan would have a high level of expectation of success following the teachings of the reference to achieve the claimed inventions.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Nathan M. Nutter whose telephone number is 571-272-1076. The examiner can normally be reached on 9:30 a.m.-6:00 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, James J. Seidleck can be reached on 571-272-1078. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Nathan M. Nutter
Primary Examiner
Art Unit 1711

nmn

31 May 2007